REMARKS

Claims 1-13, 38-39, 49-56 are pending in the present application. No claims are amended. Reconsideration of the claims is respectfully requested.

Claims 1, 38 and 49 recite the novel aspects of the invention pertaining to broadcasting multiple channels and the user rating information to a plurality of users. At each user site, a receiver is tuned to direct a preferred entertainment file from a broadcast stream based on that user's rating information for the current program guide of the streaming transmission to a user output device for streaming playback. A user input device provides real-time feedback on the streaming entertainment files that is returned to the server to update the user rating information that is rebroadcast to the user sites.

Claims 1-13, 38-39 and 49-56 were rejected under 35 USC 103(a) as being unpatentable over Halliday (US2008/0140852) in view of Stumphauzer, II (US 2003/0014767) and further in view of Rosenberg et al (7,321,923). The Examiner relies on: Halliday for the system server and database, the plurality of entertainment files for streaming transmission, a plurality of user entertainment systems and a user output device a receiver; Stumphauzer for storing user rating information on the system data base, streaming transmission of the user rating information, tuning a receiver based on user rating information and playing the streaming entertainment file on the output device and storing user rating information on the database for subsequent retrieval; and on Rosenberg for a user input device for providing real time feedback regarding the user rating of the streaming entertainment file. The Examiner asserts that such a combination of Halliday and Stumphauzer is obvious for the advantage of vastly improving a listener's enjoyment of content, by allowing the system to automatically seek and tune to desired selections without having the user constantly scan and flip through channels, allowing the user to listen/view content with ease. The Examiner asserts the additional combination with Rosenberg would be obvious for the advantage of allowing users to quickly rate content immediately, eliminating possibilities where users may end up forgetting to rate desired/undesired

content and providing a unified and central location for storage of information, allowing for better organization and management.

The basis for an obviousness rejection cannot be merely conclusory statements; there must be some "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness", KSR Int'l v. Teleflex Inc., 127 S. Ct at 1740-41, 82USPQ2d at 1396 (2007). As stated in MPEP 2141.02 a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. As also stated in MPEP 2143.01 if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

Halliday teaches a method for "time shifting" broadcasts of audio and video referred to as "Webcasts". The method may comprise a search engine that monitors Webcasting Stations to determine when and where a user desired "Work" is being provided or is about to be provided and to provide the Work to the user. As described in paragraphs [0048 – 0053] with reference to Fig. 1, each User establishes communication with a Server through the User's general purpose computer or other device. The User inputs into the computer one or more designated Works, which are then communicated to the Server. The Server determines and then communicates back to the User the when and where (i.e. URL address) the designated Work is webcast. The User then establishes communication with the designated URL at the designated time. In an alternate embodiment, the Server establishes communication with the URL and downloads the Work. As described in para [0057] this has the advantage of significantly reducing the demands placed on the communication link between a GCN and the User. This has the added advantage of reducing the requirements placed upon the Webcaster's link to a GCN because the Server is communicating directly with the Webcaster; only one link has to be established. The Webcaster does not have to communicate directly with multiple Users. To summarize, each User submits designated Works to the Server, which in turns determines when and where the Works are Webcast and then either directs each User to a specific URL at a specific time or downloads the Works itself for access by the

User. Halliday does not stream the designated requests for a plurality of users out to all the user sites with a current program guide of the content for all the different Webcasts and allow each User's computer to determine when and where a designated Work is playing or will be played. The Server communicates individually with each User and tailors the communication based on each User's designated Work. The User does not provide real-time feedback regarding the user rating of the streaming Webcast. The User has specifically designated that Work already as something he or she wants, there is no reason to then 'rate' that Work.

In Stumphauzer, the user logs on to a website and creates a virtual playlist specifying the desired selections, which is then stored on the server hosting the website or a portable storage medium or both. As shown in Fig. 6, step 6030 and described in paragraph [0038], the user creates new playlists and edits the current playlist including the selections, their respective ranks, if any, and interrupt permission, if any via the website. The playlist is subsequently transferred to the user's receiver. Stumphauzer does not teach that the entertainment files and user rating information are streamed over the same communication network. The clear implication is that the playlists are transferred separately from the entertainment files. Stumphauzer clearly teaches a 'web-based' approach controlled by the server for a user to log on from a computer terminal to create and modify the playlist. There is no suggestion to provide capability at the user site or receiver for real-time user feedback on the currently streaming file. In fact such a configuration is not amenable for use with receiver implementations explicitly contemplated by Stumphauzer. At paragraph [0017], Stumphauzer recites that the receiver can be located in any type of radio or other apparatus, can be located in various modes of transportation or located in portable radios. Although each of these receiver configuration can receive broadcast signals, none of them are described as having the capability to transmit signals back to the server and some of them are arguably incapable, as typically configured, of such transmission. For example, Applicant is not aware of any 'boom box' or 'clock radio' that is capable of transmitting information. Stumphauzer has configured his system for uni-directional communication to reach a broad base of receiver configurations.

The Examiner suggests it would be obvious to modify Halliday to "stream" unique user rating information from the system database/server over the first communication to a receiver where the receiver reviews a current entertainment guide and selectively tunes to a channel based on the user rating information. If one were to adapt Halliday's system to provide for user rating information to select a preferred streaming entertainment file instead of locating specifically designated Works, Applicant contends that one of ordinary skill in the art would not modify Halliday in the way put forth by the Examiner and claimed by the Applicant. To be consistent with the underlying architecture of the system, any User Rating Information would be communicated from the User's computer to the Server. The Server in turn would poll the various Webcasters to determine which Webcaster is or will be playing the preferred Work at a given time. The Server would then either send that URL back to the User allowing the User to tune to that URL or would download the Work for time-shifted playback by the User at a later time. The Server would interact with and direct each User independently. The Server would not stream the user rating information back over the first communication network to a plurality of users and each user receiver would not itself compare the user rating information to a current program guide to determine the channel or URL. The Examiner must consider the teachings of Halliday "as a whole" and apply the teachings of Stumphauzer in that context. Furthermore, to alter Halliday in the manner claimed by Applicant would change the principle of operation from one of centralized Server control to distributed local control at the User sites.

The Examiner acknowledges that neither Halliday nor Stumphauzer teach the user providing real time feedback regarding the user rating of the streaming entertainment file to submit an updated user rating that is transmitted to the communication center via a second communication network and stored on the system database. The Examiner cites to Rosenberg as providing such real time feedback and asserts it would be obvious to modify the system of Halliday and Stumphauzer for the advantage of allowing users to quickly rate content immediately, eliminating possibilities where users may end up forgetting to rate desired/undesired content and providing a unified and central location for storage of information. To determine

whether the Examiner's suggested construct is proper we must look at the teachings of each reference. In Halliday, the User designates particular Works for the Server to determine when and where those Works are webcast. The User has specifically designated that he or she wants to listen to or view that specific Work. There is simply no reason to then 'rate' that work at all much less in real-time. Halliday is not directed at the situation, like Applicant's, where the user is, for example, listening to the radio and system selects a preferred choice of what is currently streaming. Halliday uses a search engine to find designated Works. In Stumphauzer, the system is configured for uni-directional communication to reach a broad base of receiver configurations that are incapable of providing feedback through a secondary channel. The Examiner is picking and choosing select pieces of Halliday's and Stumphauzer's systems, assembling them in a manner not supported by the references and then using that as a platform to say there is a system capable of real-time feedback and thus there is motivation to provide such feedback.

The Applicant respectfully requests that the Examiner withdraw the rejection and issue a notice of allowance on all pending claims.

CONCLUSION

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below listed telephone number if, in the opinion of the Examiner, such a telephone conference would expedite or aid the prosecution and examination of this application.

Should any fees be associated with this submission, the Director is authorized to charge Applicant's Deposit Account 50-0383, or credit any overpayments to this account.

Respectfully submitted,

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